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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1325 OF 1995

Central Bank of India Plaintiff
versus
Vinod Kumar Nair Defendant

Mr.Pravin Kamble i/by Shaunak Satpute for plaintiff.

CORAM : A.M.KHANWILKAR, J.

DATE : 25th July 2007

PC :

1. None appears for the defendant though served. No written statement has been filed so far in spite of the order dated 24th March 2000 setting down the suit for hearing as an undefended suit.

2. In substance, the plaintiff claims that the term loan facility was extended to the defendant in terms of loan agreement Exhibit-A dated 13th March 1990 under the scheme of "Self Employment Term Loan Facility". The plaintiff availed of the term loan facility to the extent of Rs.1.00 lakh. The plaintiff paid nine instalments aggregating to Rs.29,847=95 Ps. and stopped

repayment from September 1991. In spite of reminders, as the defendant did not pay the amount, the defendant no.2 who had offered personal guarantee, was also called upon to pay the amount. As the amount remained unpaid, the plaintiff has filed present suit for the following reliefs :-

> "a) the Defendants jointly and severally be ordered and decreed to pay to the Plaintiff the sum of Rs.1,53,736.90 as per the particulars of claim being Exhibit "E" hereto together with the further interest at the contractual rate per annum from till payment and/or realisation;
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> b) that all the hypothecated tangible movable property be ordered to be sold under the directions and supervision of the Hon'ble Court and the net sale proceeds realised be appropriated and adjusted towards the satisfaction of the Plaintiff's claim in the suit and in case the said sale proceeds are found to be insufficient to satisfy the Plaintiff's claim, this Hon'ble Court be pleased to grant a personal decree against Defendant and to the extent of the unrealised claim of the Plaintiff;
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> c) that pending the hearing and final disposal of the suit the Defendants by themselves or through their agents and servants be restrained by an order and injunction of this Hon'ble Court from selling transferring alienating and/or disposing off or dealing with or encumbering or creating any third party rights upon or over the hypothecated tangible movable property as more particularly described in Exhibit "A" hereto;

d) that pending the hearing and final disposal of this suit the Court Receiver, High Court, Bombay and/or some other person be appointed receiver of hypothecated tangible movable property more particularly described in Exhibit "A" hereto with all power including power to sale under order XL Rule I of the Code of Civil Procedure against Defendant No.2 in case the sale proceed realised from the sale of hypothecated goods is found to be insufficient to satisfy the plaintiff's claim in the suit being Exhibit "E" to the plaint to the extent of the unrealised claim;

e) for ad-interim relief in terms of (c) (d) hereinabove;

f) for cost of the suit;

g) for such other and further reliefs as the nature and circumstances of the case may require."

3. As mentioned earlier, the defendant has not bothered to appear in spite of service. No written statement has been filed. Obviously because the defendant does not have any plausible defence. On the other hand, the plaintiff has filed affidavit of evidence sworn by Vinodkumar Singh. Besides, the plaintiff has produced original documents in support of their claim. The case made out in the plaint is reiterated in the affidavit of evidence and is substantiated by the documents produced by the plaintiffs. In the circumstances, in exercise of power under Order VIII, Rule 10 of the Code of Civil Procedure,

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1908, I proceed to decree the suit on the following terms.

4. ORDER :-

(a) Decree in terms of prayer clauses (a) and (b) with costs;

(b) The Decree be drawn up accordingly.

(A.M.KHANWILKAR, J.)